IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/11/2002

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THE HONOURABLE MR. JUSTICE P.K.MISRA

W.P.NO.16967 of 1997
and
W.M.P.Nos.26884 of 1997 and 1602 of 1999

1.A.Thoppian
2.M.Ganesan
3.S.Ravikumar
4.Vinod
5.Arivazhagan
6.V.Murugan ..Petitioners

-Vs-

1.State of Tamilnadu, rep. by its
Secretary, Education Department
Fort St. George
Madras 9

2.Director of Primary Education
Madras 6 ..Respondents

Petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari as stated therein.

For petitioner : Mr.A.S.Narasimhan

For respondents : Mr.P.S.Sivashanmuga Sundaram
A.G.P.

:ORDER

Heard the learned counsel appearing for the parties.

2.The petitioners in this writ petition had challenged the legality of the G.O.No.423 dated 3.10.1997 to the extent that it has been laid down in the said G.O. that the benefit of G.O.No.113 dated 14.3.97 would be available to those who have passed B.Ed.Decree in the subjects namely, Tamil, Science and Maths in their basic graduation.

3.Before dealing with the contentions raised by the parties, it is

necessary to notice the essential facts.

4.The question relates to filling up of vacancies for the post of Secondary School Teachers. The essential qualification for such teachers is S.S.L.C. and training in Secondary Grade. Since sufficient qualified persons belonging to SC and ST were not available to fill up those posts, the Government decided to appoint persons belonging to SC and ST having higher qualifications, namely, graduates having B.Ed. qualifications. This was done by the Government by issuing G.O.113 dated 14.3.1997. Thereafter, on 3.10.97, the Government issued G.O.423 dated 3.10.97 and the relevant portion of the G.O.423 is to the following effect.
"The Government examined the proposal formulated by the Director of Primary school education and agreed to accept the proposals. In accordance with that, subject to the conditions mentioned below, the posts of Secondary Grade

Teachers 1152 could be filled up from the listed communities and Scheduled Tribes those who have passed in B.Ed. Degree in the following discipline, that is, Tamil, Science and Maths in their basic graduation."

The other conditions incorporated in the aforesaid G.O. are not relevant for the purpose of the present case and it is unnecessary to extract the other portions.

5. The petitioners have challenged the validity of the condition extracted above, wherein it is indicated that only persons having degree in Tamil, Science and Maths as their basic graduation would be eligible for appointment as Secondary Grade Teachers.

6. The learned counsel appearing for the petitioners has contended that initially as per G.O. 113 dated 14.3.1997 all the persons belonging to SC and ST and having higher qualifications of graduation with B.Ed were eligible to fill up the vacant posts. Subsequently, by confining the recruitment only to Tamil, Science and Maths graduates, the petitioners have been denied the posts of Secondary Grade Teachers. It has been submitted that only because sufficient Secondary Grade Teachers were not available, the Government had decided to recruit persons from SC and ST having higher qualifications and there was no justification in the subsequent G.O. to confine such privilege only to the Tamil, Science and Maths graduates. It has been indicated that in the normal course, the persons having S.S.L.C. and required training were eligible and they were not required to have passed Matriculation in a particular subject. It is submitted that if persons having mere S.S.L.C. with training in Secondary Grade could be recruited in normal course, there is no justification to insist that persons having higher qualification must be graduates in a particular subject.

7.Counter affidavit has been filed on behalf of the Government. In the counter affidavit, it has been indicated that to cope up with the growing need and requirement for teaching Science, Maths and Tamil in Standard VI to Standard VIII the Government took the policy decision to fill up the shortfall of vacancies in the post of Secondary Grade Teachers reserved for Scheduled

Caste/Scheduled Tribe with higher qualified candidates with Science, Maths and Tamil subjects, so that their services can be utilised to teach Science, Maths and Tamil in Standard VI to Std VIII without incurring further expenditure. It has been further indicated that the aforesaid measure was a temporary measure only adopted for two years to fill up the existing vacancies and is not a permanent measure. It has been further submitted that this is a concession given to the SC/ST candidates as a special case due to dearth of SC/ST Secondary Grade Teacher candidates based on the policy decision taken by the Government without offending Article 14 of the Constitution of India.

8.In a Division Bench decision reported in 1990(1) M.L.J. Page 146 it was observed,
"……When there is a complaint of violation of Articles 14 and 16 of the Constitution of India with reference to a rule or a statutory provision, it must be found out as to whether two tests stand satisfied. The first test is, as to whether the classification on which impugned rule or statutory provision is founded is based on intelligible differentia which distinguishes persons or things grouped together from others left out of the group. The second test is as to whether the differentia in question has a reasonable relation to the object sought to be achieved by the impugned rule or statutory provisions……"

9.The aforesaid extracted portion only reflects the unanimous opinion expressed by all the Courts including the Supreme Court in several cases and it is unnecessary to burden this judgment by referring other decisions.

10.In the present case, there is no question of making a special provision for SC/ST. The original G.O. 113 dated 14.3.97 was applicable to SC/ST persons. The said G.O. had been issued with a view to fill up large number of existing vacancies, as sufficient number of secondary grade teachers belonging to SC/ST were not available and the Government decided to fill up those posts from persons belonging to SC/ST with alternate qualifications namely graduation with B.Ed. It is to be remembered that the trained graduates as compared to S.S.L.C. candidates with Secondary Teacher training have got higher qualification. It is submitted by the learned counsel appearing for the State that, but for the scarcity of sufficient qualified Teachers, it would not have been necessary for the Government to pass any order for recruitment from higher qualified persons and only because persons having the required qualification were not available, the posts were thrown open to higher qualified candidates belonging to SC/ST.

11.As already noticed in normal course, persons having S.S.L.C. with Secondary Grade Teacher Training would have been eligible.

12.I fail to understand the rationale behind the policy G.O. 423 dated 3.10.97 where the posts were only confined to B.Ed., having Tamil, Science or Maths as their subjects at the stage of graduation. If such a condition was not applicable to the persons otherwise eligible as Secondary Grade Teachers, it is not understood as to how it is necessary to insist upon Science, Tamil and Maths as the subjects at the graduation stage. The condition imposed appears to be arbitrary.

13.For the aforesaid reasons, the condition as incorporated in G.O.4 23 dated 3.10.97 which has already been extracted, is found to be arbitrary, discriminatory and is hereby quashed. It is made clear that the posts referred to in G.O.423 dated 3.10.97 can be filled up by trained graduates teachers belonging to SC and ST who have done their graduation in any subject. It is not disputed that some posts have remained vacant. Steps need be taken for filling up of those vacancies from the original candidates as per other conditions in G.O. 113 dated 14.3.97 and G.O. 423 dated 3.10.97. However, the Government cannot insist that only graduates having Science, Maths and Tamil would be considered. It is also made clear that if any candidate has crossed the age limit that will not be considered as a bar as the matter has been remained in the High Court for all these years.

14.This writ petition is accordingly allowed. There will be no order as to costs. W.M.P.No.26884 of 1997 is dismissed. In view of the above no orders are necessary in W.M.P.No.1602/1999.

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To

1.The Secretary
State of Tamilnadu,
Education Department
Fort St. George
Madras 9

2.Director of Primary Education
Madras 6